

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**ADDENDUM No. 1 TO
TECHNICAL ANALYSIS**

**Proposed Administrative Civil Liability
Contained in Complaint No. R9-2002-0053**

Mr. Ernest Moretti

**NONCOMPLIANCE
WITH
CALIFORNIA WATER CODE SECTION 13267
At
Former Santa Ysabel Chevron
30350 Highway 78
Santa Ysabel, California**

August 29, 2002

By

**Barry S. Pulver, R.G., C.E.G., C.H.G.
Associate Engineering Geologist
Tank Site Mitigation and Cleanup Unit**

**Julie Chan, R.G.
Senior Engineering Geologist
Chief, Tank Site Mitigation and Cleanup Unit**

1.0 INTRODUCTION

Mr. Ernest Moretti owned and/or operated the former Chevron service station in Santa Ysabel, San Diego County which waste fuel from underground storage tanks was deposited in soil and discharged to ground water, causing conditions of pollution and contamination. Mr. Moretti was required to undertake investigation of the extent of the discharge and pollution pursuant to California Water Code (Water Code) section 13267. Mr. Moretti was required to submit a technical report of a soil and groundwater investigation to the Regional Board by February 24, 2000. Mr. Moretti failed to submit the report on time, and, despite repeated requests and warnings of potential enforcement, did not submit the report until April 9, 2002, after the Complaint in this matter was issued and the hearing scheduled. Mr. Moretti's failure to submit the required technical report lasted for a total of 774 days. The Complaint included a recommendation that the Regional Board assess civil liability of \$55 per day of violation against Mr. Moretti; the total recommended liability for 774 days of violation would be \$42,570.

The Regional Water Quality Control Board, San Diego Region (Regional Board) held a hearing on Complaint No. R9-2002-0053 on April 10, 2002. Mr. Moretti contended that he could not pay the recommended amount of civil liability and offered to provide financial documentation supporting this contention. The Regional Board deferred acting on the complaint pending an analysis of Mr. Moretti's ability to pay the civil liability proposed in the complaint. This addendum reports on the Ability to Pay Analysis provided by the State Water Resources Control Board (State Board), and on relevant compliance milestones since the April 2002 hearing.

2.0 ABILITY TO PAY ANALYSIS

By certified letter dated April 11, 2002, the Regional Board issued a request to Mr. Moretti to submit financial documents needed to conduct an ability to pay analysis. The requested documents were received May 3, 2002. The Economic Unit of the California State Water Resources Control Board Office of Statewide Initiatives conducted an ability to pay analysis to evaluate whether Mr. Moretti could pay the proposed ACL. Mr. John Lemmons of the Economics and Effectiveness Unit requested additional financial information from Mr. Moretti on June 23, 2002. Mr. Moretti submitted his response directly to Mr. Lemmons.

The ability to pay analysis was received by the Regional Board on August 29, 2002. The analysis concluded that Mr. and Mrs. Moretti have a limited income of less than \$30,000 per year. This income includes social security payments of \$16,320 per year and rental income (from the site) of \$7,200 per year. Although their yearly income is modest, it appears that Mr. and Mrs. Moretti do not pay rent or mortgage for their home or the rental property in Santa Ysabel. Although the analysis concluded that the ACL would cause a significant hardship for Mr. and Mrs. Moretti it did not conclude that they cannot afford to pay the ACL.

Since Mr. Moretti is eligible for reimbursement of expenses from the Underground Storage Tank Cleanup Fund, imposition of the proposed ACL should not interfere with Mr. Moretti's ability to finance cleanup activities at the former gas station and bring operations into compliance. Since the business associated with the property is a rental business, and the property appears to be owned free and clear by Mr. Moretti, imposition of the ACL should not interfere with

Mr. Moretti's ability to stay in the rental business. Since the amount of the ACL is greater than Mr. Moretti's annual income, payment in a lump sum might leave Mr. Moretti without the financial resources to secure basic necessities for one year. However, Mr. Moretti has the option of securing a loan to pay for the ACL.

3.0 CURRENT COMPLIANCE STATUS

Mr. Moretti submitted the delinquent technical report that is the subject of this complaint on April 9, 2002. The report essentially fulfilled the requirements of the Regional Board's November 1999 order. Mr. Moretti has also submitted all required quarterly groundwater monitoring reports in compliance with Directive 15 of Cleanup and Abatement Order (CAO) No. 99-26. Mr. Moretti is also in the process of starting an interim remedial action pursuant to Directive 1 of CAO No. 99-26. Specifically, Mr. Moretti is obtaining permits to install a soil vapor extraction system that will be used to cleanup contaminated soil and rock in the vicinity of the former UST system.

Nonetheless, Mr. Moretti is still in violation of Directive 4 of CAO No. 99-26, which required the submittal of a Corrective Action Plan (CAP) by May 30, 2000. With the completion of the technical report involved in this complaint, and with the start up of the interim soil vapor extraction system, Mr. Moretti should have all the information needed to prepare the CAP.

4.0 WATER QUALITY ENFORCEMENT POLICY CONSIDERATIONS

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) dated February 19, 2002 states:

The ability of a discharger to pay an ACL is limited by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, it may be reduced on the grounds of ability to pay. The RWQCBs may also consider increasing an ACL to assure that the enforcement action would have a similar deterrent effect for a business or public agency that has a greater ability to pay.

Normally, an ACL should not seriously jeopardize the discharger's ability to continue in business or operation. The discharger has the burden of proof of demonstrating lack of ability to pay and must provide the information needed to support this position. This adjustment can be used to reduce the ACL to an amount that the discharger can reasonably pay and still bring operations into compliance. The downward adjustment for ability to pay should be made only in cases where the discharger is cooperative and has the ability and the intention to bring operations into compliance within a reasonable amount of time. If the violation occurred as a result of deliberate or malicious conduct, or there is reason to believe that the discharger can not or will not bring operations into compliance, the ACL must not be adjusted for ability to pay.

Even though payment of the ACL may result in a financial hardship to Mr. Moretti, the Enforcement Policy does not recommend a downward adjustment for ability to pay in cases where:

- the discharger is uncooperative; or
- does not have the ability or intention to bring operations into compliance within a reasonable amount of time.

Mr. Moretti has been uncooperative in complying with CAO No. 99-26. The following table presents his past history of non-compliance that demonstrates his uncooperative actions regarding compliance with CAO No. 99-26.

Date of Notification	Violation
2/22/00	Violation – Failure to implement workplan
3/23/00	Notice of Violation No. 2000-52 – Failure to implement workplan and failure to submit soil and groundwater report
12/13/00	Violation – Failure to submit workplan addendum
11/6/02	Notice of Violation No. 2001-331 – Failure to submit quarterly groundwater report
11/30/01	Notice of Violation – Failure to submit Corrective Action Plan

Mr. Moretti's recent actions do not suggest that he cannot or will not bring operations into eventual compliance with CAO No. 99-26. However, at this time Mr. Moretti has not indicated when he might submit an adequate Corrective Action Plan in fulfillment of Directive 4 of CAO No. 99-26. Currently, the CAP is over 800 days late. Thus, the Regional Board cannot be sure that Mr. Moretti has the ability, or intention, to bring operations into compliance within a reasonable time frame.

Because of Mr. Moretti's lack of cooperation prior to the complaint, and because Mr. Moretti has not demonstrated that he can bring operations into compliance within a reasonable time frame, the Regional Board is not required to reduce the ACL because of financial hardship to Mr. Moretti. Therefore, the Regional Board should not consider a reduction in the proposed ACL based on Mr. Moretti's ability to pay.

6.0 ADJUSTEMENT TO NUMBER OF DAYS OF VIOLATION

The original ACL was based on 775 days of violation including April 10, 2002. Assessed at \$55 per day of violation, the original ACL was \$42,625. Because the technical report was submitted on April 9, 2002, and because the report essentially fulfilled the requirements of the Regional Board's directive, the number of days of violation is reduced to 774 days. Therefore, the proposed ACL amount is \$42,570, which includes consideration of the Regional Board's costs of \$12,625 to prosecute this enforcement action¹.

¹ There is a discrepancy between the staff costs reported in the Technical Report and the Executive Officer Summary Report from the April 10 hearing. The correct figure for the staff costs is \$12,625 as reported above.